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Woodcock Washburn LLP.

PATENT APPLICATION

By: /William F. Smith/
William F. Smith

Date: June 21, 2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

GROUP ART UNIT: 3643

EXAMINER: ISIS A. D. GHALI

In re application of: Peter M. J.)
Bedding, et al.)
)
Application No: 10/802,342)
)
Confirmation No.: 3643)
)
Filed: March 17, 2004)
)
Attorney Docket No.: 7593-CIP)
)
Customer No.: 22922)

For: NUTRITIONAL PRODUCT
FOR ENHANCING GROWTH
AND/OR STRENGTHENING
THE IMMUNE SYSTEM OF
EQUINE FOALS

Commissioner for Patents
Mail Stop Amendment
P.O. Box 1450
Alexandria, VA 22313-1450

June 21, 2011

COMMENTS ON STATEMENT OF REASONS FOR
ALLOWANCE AND INTERVIEW SUMMARY

Sir:

In response to the Notice of Allowance, the Examiner's Amendment, and the
Interview Summary mailed April 29, 2011, and the Supplemental Examiner's
Amendment mailed May 18, 2011, entry of this Comments on Statement of Reasons for

Allowance is respectfully requested. No additional fee for this paper is believed to be required. However, the U.S. Patent and Trademark Office is authorized to charge any fees required to secure the entry of this Comments on Statement of Reasons for Allowance and Interview Summary, or to credit any overpayment, to Deposit Account No. 18-0882.

Remarks begin on page 3 of this Comments on Statement of Reasons for Allowance and Interview Summary.

Remarks:

In the Notice of Allowance and the Examiner's Amendment mailed April 29, 2011, the Examiner allowed Claims 1-10, 12-17, 19-22, and 24-38.

Interview Summary

Examiner Ghali is thanked for conducting telephonic interviews with William F. Smith, Registration No, 58,346, on April 19, 2011, and May 12, 2011. As discussed during the April 19, 2011, interview, Examiner Ghali indicated that she would withdraw the obviousness rejections in view of the claims featuring that the soluble fiber source is at least one ingredient selected from the group consisting of oats, barley and soybeans. It was also agreed that the specification provided adequate written descriptive support for the pending claims and that the rejections under 35 U.S.C. § 112, first paragraph, would be withdrawn as well.

It was also agreed to change the phrase "protein concentrate supplement" in claims 1 and 27 to read "protein concentrate." The amendment removes a redundant word and does change the scope of the claims.

It was also pointed out that the header on pages 2-3 of the Amendment filed on February 14, 2011, inadvertently set forth the wrong Application No. Examiner Ghali agreed that the claims set forth on those pages were the correct claims from this application. The typographical error is regretted.

The Examiner indicated that she would make these amendments by Examiner's Amendment and that the case would be allowed.

In the May 12, 2011, Interview, the undersigned pointed out that "protein concentrate supplement are present in said nutritional product" in lines 10-11 of Claim 1 should be changed to read "protein concentrate are present in said nutritional product" for the sake of consistency. The Examiner indicated that she would make this additional amendment and issue a supplemental Examiner's amendment.

Comments On Statement of Reasons for Allowance

First, Applicants note that the Examiner stated that she had changed the title of the invention to "Nutritional Product for Enhancing and/or Strengthening the Immune System of Equine Foals," see Examiner's Amendment, page 2. However, the title was instead changed to "Nutritional Product for Enhancing Growth and/or Strengthening the Immune System of Equine Foals." Applicants believe that the latter title is correct.

Second, Applicants note that the Examiner stated in the Interview Summary:

"The term 'source of dietary nucleotides' was discussed with Mr. Smith (sic). The examiner indicated that the term is broad and suggested removal of the term 'source of'. Mr (sic) Smith explained that the dietary nucleotides" (sic) have to be supplied in a source and as disclosed by the specification dietary nucleotides are supplied for example by 'yeast cell extract'."

Applicants note that the undersigned declined the Examiner's request to delete the term "source of." Applicants further note that while "yeast cell extract" is one possible

exemplary source of dietary nucleotides, that this exemplary source was provided to the Examiner only to show the Examiner that it would be inappropriate to compel the Applicants to delete the term "source of," and in no way limits the scope of the claims.

Third, Applicants respectfully submit that the Statement of Reasons for Allowance presented in the Notice of Allowance of April 29, 2011, does not set forth all of the reasons why the claims are allowable. Applicants specifically wish to note that not only does no motivation exist to replace the fibers of the Fuchs et al. reference (U.S. App. Pub. No. 2002/004988) with those provided by the present claims, as stated by the Examiner, but the Fuchs et al. reference explicitly requires fibers that do not induce satiety, and thus the Fuchs et al. reference also explicitly teaches away from the present invention as claimed.

Additionally, the Examiner stated

"The combination of Fuchs with Myllymaki, the article Alltech, and optionally further in combination with either Hallfrisch et al. or Van Lengerich et al. do not teach the claimed nutritional product comprising a polar lipid that has been isolated from its natural source which polar lipid is high in glactolipids and antioxidants; a soluble fibers source that has been fractionated from its natural origin which soluble fiber source; wherein said soluble fiber source is derived from at least one ingredient selected from the group consisting of oats, barley, and soybeans; a nutricine consisting of a source of dietary nucleotides; and a protein concentrate, wherein said polar lipid, said soluble fiber source, said nutricine, and said protein concentrate supplement are present in said nutritional product in respective amounts sufficient to enhance growth and/or strengthen the immune system of equine foals, as instantly claimed."

Applicants submit that the Statement of Reasons for Allowance does not fully explore the differences between the present claims and the cited reference. Applicants respectfully traverse the Examiner's statement to the extent it differs from a mere restatement of the claim language. Applicants further traverse the Examiner's statement and reasoning insofar as they would lead to or suggest, if at all, an interpretation of the claims different from the full extent of claim scope afforded thereto by the established law in the absence of the statement of the reasons for allowance.

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